

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
A SUBSTANTIAL DEVELOPMENT PERMIT)
ISSUED BY ISLAND COUNTY TO)
LLOYD B. PATTON AND FREDERICK K.)
MECHE)
PAT QUINN,)
Appellant,)
v.)
ISLAND COUNTY, LLOYD B. PATTON)
and FREDERICK K. MECHE,)
Respondents.)

SHB No. 79-24

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the request for review of a shoreline substantial development permit issued by Island County, came before the Shorelines Hearings Board, Chris Smith, A. M. O'Meara, Dave Jamison, Robert Derrick, and David Akana (presiding), at a hearing in Seattle on March 12, 1980. Olympia court reporter, Kim Otis recorded the proceeding.

Appellant was represented by his attorney, T. Reinhard G. Wolff; respondents Lloyd B. Patton and Frederick K. Meche were represented by

1 their attorney, Ted Zylstra. Island County did not participate in the
2 hearing.

3 Having heard the testimony, having examined the exhibits, and
4 having considered the contentions of the parties, the Shorelines
5 Hearings Board makes these

6 FINDINGS OF FACT

7 I

8 Respondents own adjoining waterfront property in a plat known as
9 Patton's Beachwood Manor located about three miles southeast of Oak
10 Harbor on the Strait of Juan de Fuca. Respondent Patton owns lots 1
11 and 2 and respondent Meche owns lot 3 in the plat.

12 II

13 Properties adjacent to respondents' lots have been bulkheaded for
14 a number of years. The property lying to the southwest is owned by
15 the County and is a bulkheaded street-end. The properties lying to
16 the northeast are a part of the plat of Patton's Beachwood Manor and
17 are located single family residences. The neighboring bulkheads have
18 caused mild local erosion of respondents' properties by their
19 alteration of wave action.

20 Respondents propose to place a riprap bulkhead in a straight line
21 between the adjoining bulkheaded properties. The proposed bulkhead
22 would lie two feet above the ordinary high water line but seaward of
23 the line of vegetation. The bulkhead would provide protection for the
24 upland property and stabilize existing beach conditions whether or not
25 residential homes are eventually constructed on the lots.

26 III

27 In 1977, respondents applied for a substantial development permit

1 from Island County for the placement of 385 cubic yards of fill and
2 approximately 180 feet of rock riprap on the shoreline to prepare
3 three residential lots for home construction. An environmental
4 checklist was prepared and reviewed by the County's planning staff,
5 after which numerous changes to the checklist were made. The County's
6 responsible official reviewed information about the proposed action
7 and the checklist and determined that the proposal would not have a
8 significant adverse impact upon the environment. A proposed
9 declaration of nonsignificance (DNS) was not filed with the State
10 Department of Game, State Department of Fisheries or State Department
11 of Natural Resources. A final DNS was issued by the responsible
12 official on September 6, 1978. The proposed substantial development
13 was reviewed and a permit was issued by Island County on May 7, 1979.

14 IV

15 The substantial development permit and application, including a
16 drawing, for the project provides the Board sufficient information to
17 evaluate the described construction.

18 V

19 Appellant owns property upland from the subject waterfront lots.
20 He challenges the permit issue on several bases: 1) the application
21 and permit are incomplete; 2) failure to circulate a proposed DNS; 3)
22 inconsistency with the master program; 4) failure to consider the
23 public interest in the property; 5) failure to prepare an
24 environmental impact statement.

25 VI

26 The Island County Shoreline Master Program (SMP), which we notice,
27

1 provides certain policies and regulations which affect the proposed
2 development:

3 The construction of bulkheads should be permitted
4 only where they provide protection to upland
5 areas or existing facilities, not for the
6 indirect purpose of creating land by filling
7 behind the bulkhead. SMP, ch. III, k)4.

8 The SMP also provides that bulkheads should be located and
9 constructed in a manner which will not create adverse effects upon
10 nearby beaches and will minimize alterations of the natural
11 shoreline. SMP, ch. III, k)1. See also Section 16.21.120(B)(1 & 3.)

12 Section 16.21.120(B)9. of the SMP allows bulkheads only when
13 evidence is presented which shows that one of the following conditions
14 exists: 1) a serious erosion threatens an established use on the
15 property; 2) it is necessary to stabilize an existing beach condition;
16 3) it is a preferred method of stabilizing permitted land fills; or 4)
17 there is a demonstrated need related to water dependent commerce and
18 industry.

19 The SMP provides that shoreline fills should be designed and
20 located so that alterations of local currents will not occur which
21 would create a hazard to adjacent property. SMP, ch. III n)2. Fill
22 materials should be of such quality that the fill will not cause undue
23 degradation of water quality. SMP, ch. III n)3. Landfills are
24 permitted only in conjunction with shoreline dependent uses. Section
25 16.21.075(B)(1).

26 Section 16.21.075(B)6 of the SMP requires that applications for
27 landfilling include information about the character of the material,
28 source of material, method of placement and compaction, and method of

1 erosion control.

2 VII

3 The County issued the substantial development permit
4 notwithstanding the SMP provision, chapter III, k)4 because the
5 property was platted before the Shoreline Management Act (SMA) was
6 effective, because of the single family residences lying north of the
7 site on the vegetation line, to protect public land, and because the
8 proposed bulkhead was not to be located seaward of the highwater mark.

9 VIII

10 Any Conclusion of Law which should be deemed a Finding of Fact is
11 hereby adopted as such.

12 From these findings the Board comes to these

13 CONCLUSIONS OF LAW

14 I

15 Appellant did not show that the County erred with respect to the
16 provisions of the State Environmental Policy Act, chapter 43.21 RCW,
17 or any guideline thereunder.

18 II

19 A shoreline substantial development permit must be consistent with
20 the approved SMP and the provisions of the SMA. RCW 90.58.140(2)(b).
21 The burden of showing inconsistency of a substantial development with
22 the criteria is upon the person seeking review. RCW 90.58.140(7).

23 III

24 Appellant did not show that the proposed bulkhead was inconsistent
25 with SMP or the provisions of the SMA. Rather, the evidence supports
26 respondent's contention that a bulkhead would provide protection to

1 the upland properties and stabilize their shoreline. However it does
2 not necessarily follow that allowing a bulkhead also allows a
3 landfill. That which respondents sought to achieve with a bulkhead
4 may be done without the addition of a landfill. In this case, the
5 proposed landfill must be independently evaluated under the SMP. The
6 potential use of the properties is for three single family residential
7 lots. The placing of landfill on shorelines for such use is not in
8 conjunction with a water dependent use as required by Section
9 16.21.075(B)1 of the SMP. Moreover, if residential use of the lots is
10 not intended and no use is identifiable as is suggested by
11 respondents, there would be no necessity for the landfill. We
12 conclude that appellant has shown that the proposed landfill is not
13 allowed by the SMP for the intended purpose. Accordingly, the permit
14 should be remanded to Island County to strike provisions allowing the
15 placement of landfill on the shorelines and to modify the permit to
16 allow an appropriate bulkhead with the minimum amount of backfill
17 necessary for construction thereof.

18 IV

19 Appellant did not show that the permit and application, insofar as
20 we have upheld it, were incomplete.

21 V

22 Appellant's contention that the permit should be vacated because
23 of pending litigation concerning the property is not well taken.

24 VI

25 Any Finding of Fact which should be deemed a Conclusion of Law is
26 hereby adopted as such.

27 From these Conclusions the Board enters this

ORDER

The Shoreline Substantial Development Permit issued to Patton and Meche is remanded to Island County to delete the provision pertaining to the placement of landfill and to modify the permit to allow an appropriate bulkhead on the properties with the minimum amount of backfill necessary for construction thereof.

DATED this 23RD day of April, 1980.

SHORELINES HEARINGS BOARD



CHRIS SMITH, Vice Chairman



A. M. O'MEARA, Member



DAVID JAMISON, Member



ROBERT S. DERRICK, Member



DAVID AKANA, Member

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